

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DAVID LOWMAN,)	C. A. No.
)	
Plaintiff,)	
)	
v.)	
)	
CIGNA GROUP INSURANCE)	
COMPANY,)	
)	
Defendant.)	

COMPLAINT

1. Plaintiff David Lowman (“Mr. Lowman”) brings this action against Cigna Group Insurance Company for violation of the Employment and Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001, *et seq.*, (“ERISA”). Mr. Lowman was a participant in the plan, an ERISA welfare benefit plan, as administered by Metropolitan Life Insurance Company. This Complaint challenges the Defendant’s unlawful denial of Mr. Lowman’s request for long-term disability benefits despite medical evidence demonstrating his qualification for said benefits. Mr. Lowman is filing this action to recover benefits due under a policy of insurance to enforce the present rights existing therein, to declare his rights under the terms of the policy, and to recover costs and attorney’s fees as provided by ERISA.

Jurisdiction

2. This Court has personal and subject matter jurisdiction over this case pursuant to 29 U.S.C. §1132(e) and (f) because of Defendant’s breach of its ERISA obligation to him.

3. Plaintiff David Lowman is a resident the State of Delaware, residing in Smyrna, Delaware.

4. Plaintiff Lowman, at all times pertinent, was a participant within the meaning of 29 *U.S.C.* §1002(2)(7) in the group long-term disability (“LTD”) plan that was issued to Dick Pacific Construction Company, Ltd., Plaintiff’s employer.

5. Plaintiff Lowman has standing to bring this action under ERISA, 29 *U.S.C.* §1132(a).

6. Defendant Cigna Group Insurance Company has its corporate headquarters located at P.O. Box 22225, Pittsburgh, PA 15222-0325.

7. Defendant is a for-profit corporation and does business in the State of Delaware, deriving revenue from its business it conducts in Delaware.

8. The plan under which the Plaintiff is suing is a group disability plan maintained by Dick Pacific Construction Company, Ltd., (“the Company”) and fully insured by a contract of insurance issued by Cigna Group Insurance Company.

9. Up until 2005, Plaintiff was working full-time for the Company. His last employment was in Tucson, AZ. He has not worked since that time.

10. The Plan’s covered class includes Plaintiff.

11. As a full-time employee, Mr. Lowman became insured under the Plan.

12. The policy provides for the Plaintiff LTD benefits to cover the employees who meet all contractual provisions, including the definition of disability.

13. The terms of the group policy defining disability are: “unable to perform the material duties of his or her regular occupation”. There is a 90-day elimination

period. The disability benefits are 66.67% of the employee's monthly covered earnings rounded to the nearest dollar of the maximum disability benefit.

14. Plaintiff last worked for the Company on or about February 7, 2005, and has been unable to return to his former job since that time.

15. On January 16, 2006, Plaintiff requested long-term disability benefits.

16. That application was denied on May 4, 2006.

17. Plaintiff filed an appeal to his denial of benefits on August 11, 2006.

18. The appeal was denied on October 25, 2006.

19. The primary grounds of denying the benefits was that Mr. Lowman's job is of a sedentary nature and that he should be able to do at least light work.

20. Mr. Lowman submitted an affidavit, which is part of the record, dated July 24, 2006. In his affidavit of July 24, 2006, he states that he was a working superintendent and some of his responsibilities included lifting equipment weighing more than 50 pounds. He said that part of his job responsibilities included driving a forklift and loading/unloading equipment, setting door and window frames, and loading/unloading door frames.

21. The Defendant did not contact any of Plaintiff's immediate supervisors to confirm Plaintiff's affidavit, but instead contacted Mr. David Tu of Human Relations, who had no actual knowledge of what Plaintiff was required to do on-site. Mr. Tu, in his email, said that Plaintiff's job did not require any physical work.

22. On November 8, 2006, Plaintiff submitted an email to the Defendant from Frank Kemp and a second email dated November 15, 2006. Mr. Kemp was the superintendent employed by the Company and was the immediate supervisor of Plaintiff.

Mr. Kemp stated that Plaintiff's position consisted of both physical and supervisory responsibilities. Mr. Kemp confirmed that Plaintiff's affidavit was accurate.

23. In December 2006, Defendant turned down Plaintiff's final appeal.

24. The Defendant funds the plan that it administers.

25. As a result of the Defendant's improper denial of Plaintiff's disability benefits, he has not received any disability payments.

26. As a further result of Defendant's denial of his disability benefits, Plaintiff has been required to pay for COBRA medical insurance benefits at his own expense at the rate of approximately \$1,000.00 per month.

27. The Defendant has improperly denied Plaintiff his benefits in the following manner:

- a) It failed to acknowledge the findings of the treating physician who indicated that he was unable to work;
- b) It failed to take into consideration the fact that Plaintiff was awarded Social Security disability benefits;
- c) It improperly ignored the affidavit of Plaintiff that indicated that 50% of his work was heavy-duty work and rejected it without reason;
- d) It failed to acknowledge the email statement of Plaintiff's immediate supervisor on the site who confirmed that Plaintiff's job was 50% physical and 50% supervisory;
- e) It selectively and improperly relied upon the email of Mr. Tu from Human Relations who has never been at the site and who had no knowledge of Plaintiff's work;

- f) It failed to take into account the medical records of the treating physicians;
- g) It failed to inquire of Frank Kemp or Devon Bryan, two superintendents who had day-to-day contact with Plaintiff;
- h) It evaluated the medical and vocational evidence in a biased manner.

28. The Defendant's denial of long-term disability benefits is a violation of 29 U.S.C. §1132(a)(1).

WHEREFORE, Plaintiff David Lowman prays for the following relief:

- a) Declaratory relief that he is entitled to disability benefits, past and present, plus interest;
- b) Reasonable attorney fees and costs pursuant to 29 U.S.C. §1132(a);
- c) Reimbursement for all COBRA expenses;
- d) Alternatively, a remand requiring Cigna to consider all of the evidence and how it impacts upon Plaintiff's ability to work; and
- e) Any other relief that this Honorable Court deems appropriate.

GRADY & HAMPTON, LLC

/S/ John S. Grady
John S. Grady, Esquire (009)
6 North Bradford Street
Dover DE 19904
(302) 678-1265
Attorneys for Plaintiff

DATED: February 15, 2007

LS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS <div style="text-align: center; font-weight: bold;">DAVID LOWMAN</div> (b) County of Residence of First Listed Plaintiff <u>Kent</u> <div style="text-align: center;">(EXCEPT IN U.S. PLAINTIFF CASES)</div> (c) Attorney's (Firm Name, Address, and Telephone Number) <div style="text-align: center;"> Grady & Hampton, LLC 6 N. Bradford Street Dover, DE 19904 (302) 678-1265 </div>	DEFENDANTS <div style="text-align: center; font-weight: bold;">CIGNA GROUP INSURANCE COMPANY</div> County of Residence of First Listed Defendant <u>Allegheny</u> <div style="text-align: center;">(IN U.S. PLAINTIFF CASES ONLY)</div> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																																
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:10%; text-align: center;">1</td> <td style="width:40%;">U.S. Government Plaintiff</td> <td style="width:10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="width:40%;">3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td style="text-align: center;">2</td> <td>U.S. Government Defendant</td> <td style="text-align: center;">4</td> <td>Diversity (Indicate Citizenship of Parties in Item III)</td> </tr> </table>	1	U.S. Government Plaintiff	<input checked="" type="checkbox"/>	3 Federal Question (U.S. Government Not a Party)	2	U.S. Government Defendant	4	Diversity (Indicate Citizenship of Parties in Item III)	<table style="width:100%; border-collapse: collapse;"> <tr> <th style="width:10%;"></th> <th style="width:10%; text-align: center;">PTF</th> <th style="width:10%; text-align: center;">DEF</th> <th style="width:40%;"></th> <th style="width:10%; text-align: center;">PTF</th> <th style="width:10%; text-align: center;">DEF</th> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;">1</td> <td style="text-align: center;">1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;">4</td> <td style="text-align: center;">4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;">2</td> <td style="text-align: center;">2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;">5</td> <td style="text-align: center;">5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;">3</td> <td style="text-align: center;">3</td> <td>Foreign Nation</td> <td style="text-align: center;">6</td> <td style="text-align: center;">6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	1	1	Incorporated or Principal Place of Business In This State	4	4	Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5	Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury	PERSONAL INJURY 362 Personal Injury - Med. Malpractice 365 Personal Injury - Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 630 Liquor Laws 640 R.R. & Truck 650 Airline Regs. 660 Occupational Safety/Health 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation X 791 Empl. Ret. Inc. Security Act	422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 840 Trademark SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS-Third Party 26 USC 7609	400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 810 Selective Service 850 Securities/Commodities/Exchange 875 Customer Challenge 12 USC 3410 890 Other Statutory Actions 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 440 Other Civil Rights	510 Motions to Vacate Sentence Habeas Corpus: 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)							
X 1	2	3	4	5	6	7	
Original Proceeding	Removed from State Court	Remanded from Appellate Court	Reinstated or Reopened	Transferred from another district (specify)	Multidistrict Litigation	Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. Section 1132 Brief description of cause: Appealing denial of disability benefits
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VII. REQUESTED IN COMPLAINT:	CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F.R.C.P. 23	CHECK YES only if demanded in complaint: JURY DEMAND: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____ DOCKET NUMBER _____
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DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____	
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AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 07-107

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 1 COPIES OF AO FORM 85.

(Date forms issued)

John S. Grady 2/23/07
(Signature of Party or their Representative)

John S. GRADY
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action